

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID A. DOWS ,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 04-341 Erie
	:	
KATHERINE E. HOLTZINGER	:	Judge McLaughlin
CONNER, ESQ., Chairman	:	
PENNSYLVANIA CIVIL SERVICE	:	
COMMISSION and JOHN DOE ,	:	
Defendants	:	JURY TRIAL DEMANDED

Part Two, Deposition of J. Stephen Shartle, pages fifty one through ninety seven inclusive

1                   And does the research questionnaire also  
2 inquire about the gender of the individual?

3           A       That is correct.

4           Q       And do any of the other data fields come to  
5 mind? What other questions are on the research  
6 questionnaire?

7           A       Race, and I believe there is still a field  
8 that asks how you found out about this position, this  
9 particular examination.

10          Q       On that point, do you know how the intern  
11 examination is advertised? I am using the term  
12 "advertised" very broadly. How was news of its  
13 existence disseminated, if you --

14          A       I do not know.

15          Q       Is there a standard protocol that the  
16 Commission uses, to tell the public of civil service  
17 exams, and when they will be, you know,  
18 advertisements, or ad campaigns, or --

19          A       I don't know.

20          Q       Who would know?

21          A       Somebody in our Bureau of Employment  
22 Services.

23          Q       Once a civil service test has been created,  
24 if only in a draft form, is there a mechanism that the  
25 Commission has for determining if the examination has

1 any particular disproportionate impact on any group of  
2 people, you know, by gender, or by age, or race, or  
3 any other way?

4 A I don't know for certain.

5 Q When you say "for certain", what do you  
6 know?

7 A I would imagine that we have those kind of  
8 figures, but I don't know what's -- if anything is  
9 done with them.

10 Q Which department would you think would have  
11 those figures, if they would exist?

12 A The Bureau of Personnel Assessment.

13 Q Are you aware of any analysis regarding the  
14 county social casework intern position, indicating  
15 whether or not it has -- that examination has any  
16 particular skew, relative to age, or race, or any  
17 other category?

18 A I don't know.

19 Q At any point were you interviewed by any  
20 representative of the U.S. Equal Employment  
21 Opportunity Commission, regarding a complaint by  
22 Mr. Dows?

23 A Not to my recollection. I don't recall  
24 that.

25 Q Do you recall being provided written

1 questions, or interrogatories, by any investigator of  
2 the EEOC?

3 A I can recall answering some questions, but  
4 I really don't remember whether it was -- whether it  
5 was from the EEOC.

6 Q Do you recall if those questions came from  
7 the Pennsylvania Human Relations Commission?

8 A I don't remember.

9 Q Did any investigator on the PHRC ever talk  
10 to you about any complaint by Mr. Dows?

11 A Not to my memory.

12 Q As to the county case -- social casework  
13 intern position, do all of the counties in  
14 Pennsylvania have casework interns?

15 A I don't know.

16 Q In theory, could any of the counties in  
17 Pennsylvania choose to use, or request a county social  
18 casework intern list, if they wished to do so?

19 A Any county that has civil service  
20 employees, yes.

21 Q Do all of the counties in Pennsylvania have  
22 civil service employees?

23 A Not all the counties have state civil  
24 service covered employees.

25 Q So, would it be correct, that in some

1 counties there are county caseworkers that are not  
2 being hired through the civil service testing  
3 procedure, the state civil service testing procedure?

4 A One county.

5 Q Which county is that?

6 A Philadelphia.

7 Q And because of -- well, it doesn't matter  
8 why.

9 Is it unique, in a number of ways; is it an  
10 exception for a number of things, having to do with  
11 Civil Service Commission, and its rules?

12 A We don't have civil service coverage of  
13 their employees, so I am not really sure what they do.

14 Q So they are completely out, off the charts,  
15 for your purposes, for civil service?

16 A Yes.

17 Q And do they have their own civil service,  
18 that they use?

19 A As -- I don't know for sure.

20 Q Okay. But as far as you know, the counties  
21 other than Philadelphia, do turn to the Civil Service  
22 Commission for caseworker lists?

23 A Yes.

24 Q Is there any protocol, or standard, that  
25 you are aware of, as to when an OCY agency in a county

1 would ask for the intern list, as opposed to the  
2 county caseworker list?

3 A I am not aware of any.

4 Q Do you recall an Erie County executive  
5 employee, named Peter Callan, C-a-l-l-a-n?

6 A I don't recall.

7 Q He was designated as the personnel director  
8 for the county?

9 A No. I don't recall anything with that  
10 gentleman.

11 Q So then you don't recall any dealings  
12 between you and Mr. Callan, that had anything to do  
13 with Mr. Dows?

14 A No.

15 Q Are you aware of any cases, other than the  
16 one that brings us here today, where an individual has  
17 claimed, in any legal proceeding, that the use of the  
18 intern list is unlawful, or improper?

19 A I -- I have no knowledge of any; any other  
20 such case.

21 Q Now, are you aware of any particular rule,  
22 or collective bargaining agreement, with respect do  
23 the Pennsylvania Code, or maybe management directive,  
24 that allows a county to hire from the intern list,  
25 rather than from the caseworker list?

1                    Any sort of document, that just  
2 specifically addresses that issue?

3            A        The management directive that was  
4 Deposition Exhibit 1 --

5            Q        Yes, sir.

6            A        -- allows the agencies to hire trainees, or  
7 interns.

8            Q        Do you have any professional familiarity,  
9 have you ever heard in your work, why the decision was  
10 made to allow hiring off the intern list?

11          A        No, I have not heard anything.

12          Q        Have you ever had occasion on your own, to  
13 try to determine why hiring from the trainee list  
14 began, or why it's authorized in, among other things,  
15 the management directive in Exhibit 1?

16          A        I'm sorry, what's the question?

17          Q        On your own, but within your work, have you  
18 ever looked into the origins of authorizing hiring off  
19 of trainee lists?

20          A        No, I haven't.

21          Q        Now, would it be correct that Ronald -- is  
22 its Rowe or Rowe?

23          A        Rowe.

24          Q        -- Rowe was the executive -- the prior  
25 executive director of the Commission?

1 A Correct.

2 MR. TAGGERT: This is 6.

3 (Thereupon, Deposition Exhibit No. 6 was  
4 marked for identification.)

5 BY MR. TAGGERT:

6 Q We are referencing a letter of December 12,  
7 2003, and if you would take a moment with that.

8 Sir, just by way of background, when did  
9 Mr. Rowe stop being the executive director?

10 A Oh, I believe it was around April of this  
11 year.

12 Q And in his letter, he notes that in his  
13 opinion the Pennsylvania Code may not govern the  
14 county caseworker hiring.

15 Do you recall having any discussions with  
16 Mr. Rowe, about the legalities of using the county  
17 caseworker intern list for hiring?

18 A I do not.

19 Q Do you recall having a discussion with him,  
20 about what the sources of law, or authority are, for  
21 there to be intern hiring?

22 A I do not recall that.

23 Q In addition to the management directive,  
24 which is Deposition Exhibit 1 --

25 A Uh-huh.

1 Q -- do you know of any other sources of  
2 authority, for hiring off an intern -- county social  
3 caseworker intern list?

4 And take your time, there is no rush.

5 A Just off the top, I could not think of  
6 anyplace else.

7 Q Now, do you know if the use of the social  
8 caseworker intern list has ever been brought to the  
9 attention of the U.S. Equal Employment Opportunity  
10 Commission, to ask them for an advisory opinion, "Is  
11 it okay to do this?" Are you aware of any inquiry of  
12 that type ever being made?

13 A I am not aware of any.

14 Q And the same question, but as to our  
15 Pennsylvania Human Relations Commission?

16 A Not to my knowledge.

17 Q Now, in your work, are you -- have you  
18 occasionally bumped into apprentice programs, and  
19 their use? Does the civil service have any  
20 involvement with apprenticeship programs of any kind?

21 A Not that I am aware of.

22 Q Okay.

23 Are you aware of any inquiries to the U.S.  
24 Department of Labor, at any time, asking if the intern  
25 programs can receive certification as accepted

1 training programs with the Department of Labor?

2 A Not to my knowledge.

3 Q Is there another state agency, that strikes  
4 you might have that responsibility, that -- another  
5 agency of our state government, that might have had  
6 the responsibility to look into possible approval of  
7 the intern programs?

8 A The agency that establishes the trainees or  
9 the intern classes, would be the Governor's Office of  
10 Administration.

11 Q Have you ever received any form of  
12 communication, you know, oral or written, from anyone  
13 at the Office of Administration, of the Governor's  
14 Office, stating the legal basis for the county social  
15 caseworker intern program, other than Deposition  
16 Exhibit 1?

17 A I have not.

18 Q And has anybody from the Office of  
19 Administration ever alleged to you, in any way, that  
20 any -- any agency has reviewed, and approved the use  
21 of the intern program, whether it is state or federal  
22 agency?

23 A No, I don't have any such knowledge.

24 Q Did Mr. Rowe consult you at all, for the  
25 development of Exhibit 6?

1 A Yes.

2 Q And what did you two discuss, relative to  
3 Exhibit 6, and the contents of it?

4 A Basically, we discussed how we would  
5 respond to each one of Mr. Dows' points in his earlier  
6 letter.

7 Q So, do you agree with Director Rowe's  
8 comment, that "As stated above, the county social  
9 caseworker intern is not a state job title"?

10 That's on page 2, paragraph numbered 4.

11 A Yes, I agree with that.

12 Q And because of that it's not in the  
13 Pennsylvania Code, or the Pennsylvania Bulletin?

14 A I don't know that to be a fact.

15 Q Would I be right, like most sensible  
16 people, you have not gone looking for it?

17 A Right.

18 MR. TAGGERT: And we are going to mark our  
19 next exhibit, and we will ask for your review in  
20 a moment.

21 (Thereupon, Deposition Exhibit No. 7 was  
22 marked for identification.)

23 BY MR. TAGGERT:

24 Q And this particular item, Exhibit 7, says,  
25 "Examination for County Social Casework Intern," and

1 it is a test announcement, this is probably, you know,  
2 bread and butter, day-to-day to you, this sort of  
3 thing, but please take a moment.

4 And it is several pages, so be sure to at  
5 least skim them, so we are talking about all the same  
6 things.

7 Now, are you familiar with the general  
8 format of Exhibit 7?

9 A Yes.

10 Q It's familiar to you.

11 And does looking at this refresh your  
12 memory a little bit about county social casework  
13 intern position announcements, and what they say?

14 A I don't know refresh my memory. It shows  
15 me what it says.

16 Q Okay.

17 A I don't know if I had a memory of it  
18 before.

19 Q Okay.

20 Well, we will come to it.

21 And my question is this: About a third of  
22 the way down on page 1, it says, "No written test  
23 required."

24 A Yes.

25 Q And is it your understanding, that actually

1 the interns don't, on a given moment, sit down and  
2 take a written test?

3 A That's what this says, yes.

4 Q Okay. And I am not trying to be a wise  
5 guy, I just don't work with this civil service stuff.

6 And then the document, Exhibit 7, goes on  
7 and talks about various things, and on page 3, under  
8 "Testing," which is in the bold black --

9 A Uh-huh.

10 Q -- it says, "You will be rated on your  
11 experience and training. Your score will be based on  
12 what you report in your Application for  
13 Employment/Promotion, and Application Supplement."

14 So, would it be correct, that completely  
15 filling out the form, and its supplement, is, if you  
16 will, the test?

17 A That is correct.

18 Q Now, when an intern fills out Exhibit 7,  
19 where does -- where does a completed Exhibit 7  
20 go? You know, physically, where does it travel?

21 A It goes to the Civil Service Commission.

22 Q I mean, it's mailed directly back to  
23 Harrisburg?

24 A I don't know with this particular program  
25 whether it has to go through some other -- through the

1 school first, or whether it goes to the agency first,  
2 some of our exams do that.

3 Q So it's possible that Exhibit 7 may go to a  
4 college that the intern is attending?

5 A It says you submit it directly to the Civil  
6 Service Commission, so it does go directly to the  
7 Civil Service Commission.

8 Q Now, and once it arrives at the Civil  
9 Service Commission, to which department would it be  
10 directed?

11 A It would be directed to our Bureau of  
12 Personnel Assessment.

13 Q And would an employee of that bureau  
14 actually hands on review the completed Exhibit 7?

15 A Yes.

16 Q And that could be any of several people who  
17 would have that responsibility? I don't know how many  
18 employees you have.

19 A I don't know. Some job titles, they have  
20 one individual that specializes in that job title. I  
21 don't know with this job title if they do that or not.

22 Q Okay. So there might be a specialist, or  
23 several different people might be generally familiar  
24 with that job title.

25 And how would the reviewing person then

1 analyze and grade the test, for example, would they  
2 have a template, would they have an example of a  
3 particularly solid answer, so they had something to  
4 work with?

5 A I don't know.

6 Q Are there other job titles -- class titles,  
7 rather, where there is no written test required; that  
8 the application is the test?

9 A Yes.

10 Q And are you personally familiar with any of  
11 those, as to how the Commission figures out how to  
12 score them, you know, how to grade them?

13 A I do not know, for any of the classes, how  
14 we do the scoring.

15 Q Would that mostly be something people  
16 within the Bureau of Personnel would know?

17 A The Bureau of Personnel Assessment.

18 Q Assessment.

19 A Yes.

20 MR. TAGGERT: Now, this will be Deposition  
21 Exhibit 8. And, you will find in a moment, that  
22 that has to do with the test announcement to be a  
23 county caseworker.

24 (Thereupon, Deposition Exhibit No. 8 was  
25 marked for identification.)

1 BY MR. TAGGERT:

2 Q Sir, again, if you would take a moment with  
3 that.

4 Now, Exhibit 8 is an announcement for  
5 county caseworker; is that correct?

6 A That is correct.

7 Q And the county caseworker job has an actual  
8 test instrument that's administered; is that right? I  
9 mean, it is an actual test that people sit for, and  
10 answer questions on an examination; is that right?

11 A All of -- I just want to be clear, we  
12 consider filling out an application and a supplement  
13 to be a test, also, and so, yes, it's a different type  
14 of test, but they are both tests.

15 Q All right. For the sake of our eventual  
16 readers --

17 A Okay.

18 Q -- I would like to work out with you a way  
19 of, you know, labeling these two different approaches,  
20 that you feel comfortable with.

21 A Okay.

22 Q What would you suggest, you know, we are  
23 talking about the -- might we call it an  
24 application/exam, or what would you feel comfortable  
25 with?

1 A Well, us people, who have been here a long  
2 time, call ones like social casework intern, an  
3 unassembled exam.

4 Q Unassembled?

5 A Unassembled, because people don't have to  
6 assemble in one spot to take the test.

7 Q So that's almost a term of art, within the  
8 Commission?

9 A Yes.

10 Q An unassembled exam, I am going to try to  
11 use that.

12 A That is an old term, that not probably many  
13 people use any more, except people who have been  
14 around as long as me, which is hardly anybody, I guess  
15 most people now call it an E&T exam, rating of  
16 education and training.

17 Q E&T?

18 A E&E. Education and experience.

19 I don't even know what these youngsters  
20 call it.

21 Q So we will call it an unassembled exam.

22 A Okay.

23 Q And what would you like to call the other  
24 type, if you will?

25 A We can just call that an exam.

1 Q We have an unassembled exam, and an exam?

2 A Yes.

3 Q Okay.

4 A Or written exam.

5 Q So I am going to try to stick with that  
6 language, and if I am slipping away, just --

7 A I was just trying to make it clear, that we  
8 consider everything to be an exam.

9 Q Now, with a written exam, and specifically  
10 the one, the announcement of which you see in front of  
11 you, the examination instrument has been developed,  
12 and eventually written by the Civil Service  
13 Commission; is that correct?

14 A That is correct.

15 Q Okay.

16 And it is administered by your staff, or  
17 people under their direct supervision; is that right?

18 A Under my direct supervision?

19 Q No, the Commission's?

20 A The Commission's direct supervision,  
21 correct. Yes.

22 Q And then does it have any subjective, or  
23 essay components, or is the examination for caseworker  
24 to right or wrong answers, you know, all or nothing?

25 A The exam announcement indicates that it's

1 all multiple choice types of questions.

2 Q And, if you know, is the grading then done  
3 by hand, or is it a machine gradable sort of  
4 instrument, you know, with blanks filled in, so that  
5 they can be machine read?

6 A Our exams are -- our written exams are now  
7 all computerized, so the person would take it on the  
8 computer, and the computer system would determine the  
9 number of right and wrong answers.

10 Q So, it's fair to say that, in a sense, it  
11 is graded by the computer program?

12 A Yes.

13 Q Which has no preferences of any kind; I  
14 mean, it doesn't know gender, it don't know any of  
15 that stuff?

16 A I hope not.

17 Q And so that's how a caseworker, county  
18 caseworker 2 exam would be graded?

19 A Yes.

20 Q Okay.

21 When an unassembled exam is reviewed, do  
22 you know if just -- if only one person grades it, or  
23 do multiple people grade it, to make sure that, you  
24 know, they are in the right zone?

25 A I don't know.

1 Q And does the grading occur back here in  
2 Harrisburg; it makes it here, and your staff, some one  
3 or more persons in your staff, the Commission's staff,  
4 looks at it?

5 A the Commission's staff grades it. I don't  
6 know that that happens in our Harrisburg office, or  
7 one of our other offices.

8 Q And if matters were coming out of Erie  
9 County, if they weren't done here in Harrisburg, would  
10 they go to Pittsburgh office?

11 A That is correct.

12 Q So it might be one or the other, or some  
13 mixture of the two offices?

14 A Yeah. I just don't know for sure.

15 Q Now, in an unassembled exam, does the  
16 candidates taking the exam have a mechanism for  
17 challenging the grading; in other words, it sends --  
18 it does -- it is not plotted against a template of,  
19 you know, exact answers, like a machine graded exam,  
20 or a computer graded exam; does the applicant have any  
21 way to ask for a review of his or her grade?

22 A Any applicant, for any type of exam, has  
23 the right to do that.

24 Q So the same mechanism would be available to  
25 a would be trainee, who would take an unassembled

1 exam?

2 A Yes.

3 Q And what would that process involve, for a  
4 person who had taken the -- well, it would be the  
5 same, what would that process involve for somebody who  
6 wanted a review of his or her grade?

7 A I don't know.

8 Q And would that be handled within  
9 Assessment; is that who would respond to the inquiry  
10 about the grade?

11 A I believe that's the case, yes.

12 Again, I am not positive.

13 Q Do you know, in the unassembled exam, for  
14 caseworker intern, when a grader receives it, is the  
15 identifying data removed from the application?

16 A I don't know.

17 Q Are you aware of any general rule, within  
18 the Commission, that in the grading of examinations,  
19 the grader, whether it's human or otherwise, is really  
20 not to have any identifying knowledge of the  
21 applicant; in other words, not know, you know, gender,  
22 and race, and all of that, so it can be a neutral view  
23 of the examination?

24 A I don't know.

25 Q Do you have any knowledge about how the

1 County of Erie chooses, when its OCY, which I  
2 understand has now been changed to Child Protective  
3 Services, chooses to request an intern list for  
4 hiring, as opposed to requesting a county caseworker  
5 list for hiring?

6 A I have no knowledge of that.

7 Q In your investigation of their practices,  
8 that you carried on, did you notice any pattern as to  
9 the county's request for the two lists?

10 A Not that I can recall, no.

11 Q Do you recall having any dealings, that in  
12 any way referenced Mr. Dows with an attorney named  
13 John Onorato, who is the Erie County Solicitor?

14 A I don't recall speaking to that gentleman.

15 Q Now, did he represent -- you testified in a  
16 hearing, about your investigation.

17 A That is correct.

18 Q And that was in Pittsburgh, Pennsylvania?

19 A Correct.

20 Q And does it refresh your memory, that  
21 Mr. Onorato was the attorney for the county at that  
22 particular hearing?

23 A Okay.

24 I didn't recall who the attorney was.

25 Q But does that now sound correct to you,

1 when you think about that?

2 A That's what it says. That doesn't change  
3 my answer. I don't recall speaking to him.

4 Q So, except for being present in the same  
5 hearing room at the State Office Building in  
6 Pittsburgh, you don't have any other recollection of  
7 dealing, or having involvement with Mr. Onorato; is  
8 that right?

9 A On something about Mr. Dows.

10 Q Now, somewhat on that last point, would it  
11 be correct that there was never a hearing, a formal  
12 notice given of a hearing, about the County of Erie's  
13 request to remove Mr. Dows from the civil service  
14 list?

15 A I don't know that for a fact.

16 Q But you never participated in one?

17 A That is correct.

18 Q And would you please tell us what you know  
19 about the Commission's decision to refuse the County  
20 of Erie's request to remove Mr. Dows from the civil  
21 service list?

22 We have already, this morning, talked about  
23 the fact that the county asked for him to be removed,  
24 Mr. Dows responded in writing, with attachments, and  
25 what do you recall happening that eventually led to

1 the commission's decision to refuse the county's  
2 request?

3 And, for example, were you in discussions  
4 about it, or --

5 A Not with the Commissioners.

6 I can recall that somebody in my chain of  
7 command, and I don't recall whether it was my bureau  
8 director, or the deputy director, or the executive  
9 director, asked me for whatever information I had on  
10 Mr. Dows' previous employment, and at Erie Children  
11 and Youth, and his subsequent termination.

12 Q And as you understand it, who had the final  
13 decision as to whether or not the county's request  
14 would be granted?

15 A The Civil Service Commissioners.

16 Q And were you aware of that issue being  
17 brought in front of the Commission; the request to  
18 remove Mr. Dows being brought in front of the  
19 Commission?

20 A I think one of these exhibits was a  
21 Commission order.

22 Q Right, it is.

23 A Which would result from that -- Deposition  
24 Exhibit No. 5 is the result of that being brought in  
25 front of the Commissioners.

1 Q Agreed.

2 And so, what has -- the gap I am trying to  
3 fill in, is we have the request that Mr. Dows be  
4 removed, and we have -- we know that he responded in  
5 writing, and then we have an outcome, but to the best  
6 of your knowledge, was there ever a hearing on the  
7 issue of removing Mr. Dows?

8 A I am not aware that there was a hearing.

9 I have no knowledge of a hearing.

10 Q Neither do we.

11 And since it worked out fine for him,  
12 that's okay.

13 But do you recall having any communication  
14 with the County of Erie, or its representatives, where  
15 you suggested that it might withdraw its request that  
16 Mr. Dows be removed from the list?

17 A I don't recall that, any such conversation,  
18 no.

19 Q Now, referencing the announcement for  
20 county caseworker 2, would it be correct that that  
21 particular test requires that a person have a college  
22 degree to sit for the test?

23 A That is not correct.

24 Q So, what formal education would be  
25 required, as you understand it?

1           A        In order to qualify, the individual would  
2    have to have a minimum of 12 college credits in social  
3    science types of courses.

4           Q        If you know, would there be any weight  
5    given to having more college education? Or is that  
6    simply a threshold test, to be able to sit for the  
7    exam?

8           A        It's a threshold test, to be placed on the  
9    list, if you pass the exam.

10          Q        Well said.

11                 And is it permissible, under a Rule of 3,  
12    for a hiring authority to look at the amount and type  
13    of formal education a person has, among the top three  
14    applicants; in other words, could a hiring authority  
15    sort out among the three, based on formal education  
16    the person had?

17          A        I don't know.

18          Q        You haven't run into that particular issue,  
19    professionally?

20          A        I haven't run into that particular issue.

21          Q        As to the County of Erie's request that  
22    Mr. Dows be removed from the civil service list, do  
23    you recall interviewing him, either by telephone, or  
24    in person, to discuss that issue?

25          A        I don't recall doing that, no.

1 Q Do you recall on that topic, do you recall  
2 interviewing any County of Erie employees?

3 A On this specific topic, no, I don't recall  
4 that.

5 Q Did you interview any persons who had  
6 worked with Mr. Dows, regarding his job performance?

7 A No.

8 Q Did the Commission form its final -- its  
9 opinion, about the county's request, based on the  
10 documentary evidence; and by that I mean, if there  
11 were not interviews of Mr. Dows, or people with whom  
12 he worked, was the decision basically made on paper,  
13 on the documents that had been submitted by the  
14 parties?

15 A I don't know.

16 Q Were you ever asked your opinion, as to  
17 what the Commission should decide, as to the removal  
18 of Mr. Dows?

19 A By people at my chain of command?

20 Q Yes.

21 A No.

22 By the Civil Service Commissioners.

23 Q But in your chain of command, you were?

24 A Yes.

25 Q And what did you tell them?

1 A I told them that we should -- that his name  
2 should not be removed from the list.

3 Q And what were the main reasons you believed  
4 that?

5 A Because his appointment to a caseworker job  
6 wasn't done in accordance with civil service  
7 regulations, his termination from the caseworker job  
8 was not done in accordance with the civil service  
9 regulations, and I thought he deserved the opportunity  
10 to be hired properly, and given the chance to do the  
11 work.

12 Q And then let that show what he could or  
13 could not do?

14 A Correct.

15 Q Are you aware of the county social  
16 caseworker intern position being described, or  
17 addressed in collective bargaining unit -- in  
18 collective bargaining agreements that the counties  
19 have?

20 A I have no knowledge of county collective  
21 bargaining agreements.

22 Q Is there any part of the Commission that  
23 has any knowledge, or makes a point of knowing if  
24 there is an interface, or relationship between  
25 collective bargaining agreements, and the class titles

1 and descriptions that are developed, and so that they  
2 match?

3 A I am not aware that anyone in the  
4 Commission would do that.

5 Q So, for example in our case, in Erie  
6 County, do you even know if a collective bargaining  
7 agreement addresses the job or class title county  
8 social casework intern?

9 A I have no knowledge.

10 Q Now, would it be correct that it is  
11 permissible under civil service regulations, for the  
12 hiring authority to have a reasonable probationary  
13 period?

14 A Civil service regulations establish a  
15 probationary period. I suppose an agency could have  
16 their own, but it can't be in conflict --

17 Q It can't conflict?

18 A -- with the civil service provision.

19 Q So it certainly couldn't be shorter than  
20 the mandated civil service time period?

21 A It could be shorter. But they would still  
22 have to serve the full civil service probationary  
23 period.

24 Q So are you telling us that where there is a  
25 conflict, between the -- a probationary period the

1 hiring authority believes that it has, and the  
2 required civil service length, the longer civil  
3 service length applies? That's the actual  
4 probationary period that would be accepted?

5 A I don't want to give a long winded answer,  
6 but the probationary period the county gives could be  
7 for some different purposes; when you get benefits,  
8 when you get a pay increase, things that are not  
9 within the purview of the Civil Service Commission.

10 Q Yours is about performance?

11 A About performance, exactly.

12 Q Entirely?

13 A Exactly.

14 Q All right. That was both short winded, and  
15 got to the point.

16 Now, are you familiar with a state civil  
17 service form called "Availability Survey/Interview  
18 Notice"?

19 A Yes, I am.

20 MR. TAGGERT: Off the record.

21 (Discussion off the record.)

22 (Thereupon, Deposition Exhibit No. 9 was  
23 marked for identification.)

24 BY MR. TAGGERT:

25 Q And if you would take a look at Exhibit 9

1 and identify that for us.

2 A That is SCSC Form 98, availability  
3 survey/interview notice.

4 Q And what is the function of that form, as a  
5 form, not just this particular example of it, the  
6 general --

7 A The function of the form is for an agency,  
8 with civil service positions, after they receive the  
9 civil service list, or certification, this form is  
10 used to contact the eligibles on the list, to either  
11 determine their availability for the position, or to  
12 schedule them for interview.

13 Q Now, if an individual responds to this  
14 form, saying that he or she is not currently  
15 available, does that person lose his or her place on  
16 the list, or just wouldn't be offered a job at that  
17 time, if there is a job available?

18 A If they are not available at that time, and  
19 depending on what they say -- if they say, "I am not  
20 available at this time," that would just apply to that  
21 list that the agency has at that moment.

22 The next time they get a civil service  
23 list, or certification, the person would be  
24 available -- they would have to be contacted again, to  
25 see if they are now available.

1 Q So the person isn't renouncing their place  
2 on the list, just their chance for a job at that  
3 moment?

4 A At that moment.

5 Although there are blocks that could be  
6 checked, to say, "I don't want to be contacted any  
7 more."

8 Q In which case, the person would really be  
9 saying, "I am abandoning this particular list, my  
10 place on it"?

11 A Correct.

12 Q Do you recall in your dealings with Office  
13 of Children and Youth, in Erie, having dealings with  
14 an administrator named Paul Concella, C-o-n-c-e-l-l-a?

15 A I don't recall ever speaking to that  
16 person.

17 Q This is just in case it might refresh your  
18 memory, I am not challenging you otherwise, but this  
19 might have been a person who, when you were  
20 investigating the per diem hires, and so forth, might  
21 have told you that Mr. Dows did have a per diem job,  
22 but that he would be let go, or be fired?

23 Or he might have told you, Mr. Concella  
24 told you that he didn't believe that Mr. Dows should  
25 be allowed to apply for a caseworker 2 position?

1           A        In regard to our investigation, I did not  
2 talk to any male individual, about the case, or what  
3 we were investigating.

4 Q So that way you can be pretty sure you are  
5 ruling out Mr. Concetta?

6 A Yes. Yeah.

7 Q In your investigation, did any of the  
8 County of Erie employees, or their attorney, the  
9 county's attorney, tell you that economic reasons  
10 drove any of the decisions they made relative to  
11 Mr. Dows, or hiring per diems?

12 A I don't recall that being a reason.

13 Q Something along the line of they were  
14 trying to save money?

15 A That could have been said, it's possible, I  
16 don't recall that specifically.

17 (Thereupon, Deposition Exhibit No. 10 was  
18 marked for identification.)

19 BY MR. TAGGERT:

20 Q Sir, if you would take as long as you need,  
21 with Deposition Exhibit 10.

22 If I accidentally shorted you, it is purely  
23 by accident.

24 A It is a little short. I am not sure what  
25 all is missing, but it is a little short.

1                   We have got some things in the back  
2 missing.

3           Q        So there were attachments, that customarily  
4 would be with it?

5           A        Yes, and it does feel thin, so I am not  
6 sure if there are other things that are missing, or  
7 not.

8                   MR. TAGGERT: Let's go off the record.

9                   (Discussion off the record.)

10          Q        Sir, all of us collectively realize that  
11 what I had originally given you as Exhibit 10 was  
12 defective, because apparently the photocopying  
13 resulted in it only having every other page; is that  
14 correct?

15          A        That's correct.

16          Q        And you now have been given Exhibit 10,  
17 that appears to have all of the pages?

18          A        That is correct.

19          Q        Okay.

20                   Would you generally describe for us, what  
21 is Exhibit 10?

22          A        Exhibit 10 is the certification of  
23 eligibles for the classified service manual, which is  
24 in our management directive system as M580.1.

25          Q        And how often is there any regular interval

1 at which this document is amended, or revised;  
2 annually or, you know, some formula that you use?

3 A In the past, there was not a formula. The  
4 Governor's Office is currently coming up with a format  
5 law, to ensure that the directives are updated more  
6 timely, on a recurring basis.

7 Q Now, it is my understanding that the  
8 Exhibit 10 version, that you have in front of you, is  
9 the one that was in effect at the time you were  
10 carrying on your investigation of the Dows matters.

11 A That is correct.

12 Q Do you know, is there a new one, a newer  
13 one, since that Exhibit 10?

14 A I'm assuming that this is the most current  
15 one.

16 There has not been one published since we  
17 investigated Erie County Children and Youth. I can't  
18 say for certain whether the 1997 one is the current  
19 edition or not. I don't recall what the current  
20 edition's date is.

21 (Thereupon, Deposition Exhibit No. 11 was  
22 marked for identification.)

23 BY MR. TAGGERT:

24 Q And, sir, I am now showing you Deposition  
25 Exhibit No. 11, it says, "Test Announcement, Exams for

1 County Caseworkers, County Caseworker 1, 2 and 3."

2 Take your time with that.

3 Q Have you had a chance to look at that, sir?

4 A Yes.

5 Q And what is it?

6 A It is the examination announcement for  
7 county caseworker 1, county caseworker 2, and county  
8 caseworker 3, amended and reissued on March 19th 2004.

9 Q Now, if you know, did that change anything  
10 from the prior situation; are there more categories of  
11 caseworker, or did it change anything you know of?

12 A It changed the minimum requirements for  
13 county caseworker 1.

14 Q In what way were they changed?

15 A The previous announcement listed one year  
16 experience as a county social service aide 3, and the  
17 Commission added, "or in a similar position performing  
18 paraprofessional case management functions."

19 Q Do you know what reasons the Commission had  
20 for making that change?

21 A We had received some complaints, in regard  
22 to the fact that there was -- that we were not  
23 qualifying people who had experience that was  
24 equivalent to county social service aide 3, but they  
25 weren't specifically county social service aide 3's.

1 Q What kind of examples, of equivalent, or  
2 similarity were brought to the attention of the  
3 Commission?

4 A Positions in private industry, for example,  
5 or in, maybe like nursing home, or something to that  
6 effect, where they did similar work to what a county  
7 social service aide 3 would do.

8 Q And the equivalency would be examined after  
9 the actual testing; is that right; in other words --

10 A Typically, yes.

11 Not always.

12 Q Okay.

13 So, taking into account this newest  
14 exhibit, are there really four categories of county  
15 social caseworker, the intern, and then the three that  
16 are listed in the exhibit that you are looking at?

17 A This didn't change that.

18 Q So --

19 A But in exam -- I am not sure I understand  
20 the question.

21 Q Let me withdraw it, or ask a better one, or  
22 at least a different one.

23 A Okay.

24 Q Which is: Are there four categories of  
25 county caseworker, one of them is intern? The class

1 title?

2 A I can't say that because, there is other  
3 county caseworker classes. There is county caseworker  
4 supervisor, there is a couple of levels of county  
5 casework managers, so --

6 Q But nonmanagerial levels?

7 A I can't limit it to four.

8 Q Would it be right if we eliminated  
9 managerial, would you feel comfortable in saying there  
10 are four?

11 A Then there is four, yes.

12 Q And those, in a sense, would be considered  
13 entry level positions?

14 A No.

15 Q The intern would be?

16 A The intern would be entry level.

17 Q Right. Which other one, if any, would be?

18 A County caseworker 1, would be considered an  
19 entry level.

20 For some counties, county caseworker 2  
21 could be an entry level.

22 Q Would you explain that a little bit?

23 A Well -- and I don't know all of the  
24 functions the county caseworkers perform, because I am  
25 not a classification expert. But county Caseworker

1 2's work more independently than county caseworker 1.  
2 Some counties would prefer to hire more people who can  
3 work more independently, who have more experience.

4 Q Oh, I see.

5 A And for that county, that's the level that  
6 they appoint people.

7 Q So a county can choose to bring people in  
8 at these different levels, based on their judgment of  
9 the experience the person is bringing?

10 A Correct.

11 Q Okay.

12 But, for all of the positions, except  
13 intern, there would be a standard written exam, as  
14 opposed to the unassembled exam; would that be right?

15 A For the three caseworker jobs that we  
16 discussed, that is correct.

17 MR. TAGGERT: This is a good time to  
18 suggest we take a little break.

19 (Recess taken.)

20 (Thereupon, Deposition Exhibit No. 12 was  
21 marked for identification.)

22 BY MR. TAGGERT:

23 Q Sir, I am going to show you examination  
24 results, Deposition Exhibit 12.

25 Would you take a moment with that?

1 A Sure.

2 Q And, sir, what exactly is Exhibit 12, and  
3 what information does it tell you?

4 A This is a notice of examination results for  
5 Mr. Dows, dated June 25th, 2003, which gives his  
6 examination results for the county caseworker 2, and  
7 indicates that he is No. 2 on the list.

8 Q And that would be for two counties, Erie  
9 and Crawford?

10 A That would be for Erie County and Crawford  
11 County.

12 Q Now, we are going to double back on a few  
13 things we talked about earlier.

14 And when the County of Erie requested that  
15 Mr. Dows be removed from the civil service list, did  
16 you learn, in your investigation, that after that  
17 request some persons were hired in the caseworker  
18 position, while the request of the county was pending  
19 with the Commission?

20 A Yes, I was aware of that.

21 Q In a request to remove an individual from  
22 the list, is the burden of proving that should happen  
23 on the requesting party; in this case, would it have  
24 been on the County of Erie to have proven a reason  
25 that was adequate to remove Mr. Dows?

1 A I don't know.

2 Q Now, Mr. Dows was treated as if he was --  
3 in that period, after the request, seemed to have been  
4 treated as if his situation was in a suspense status,  
5 while it was resolved.

6 Is -- would that be customary, that until  
7 there was a resolution of the request to remove  
8 someone, he or she would not be placed in a position?

9 A That is up to the agency, whether they want  
10 to appoint an individual in the meantime.

11 Q Now, did they do that at their own peril,  
12 in the sense that if the person, of whom they are  
13 complaining, is not removed from the list, then  
14 perhaps they have put the wrong -- or lower person in  
15 the position? Do they assume that risk, by proceeding  
16 to hire for the position?

17 A I'm getting a bit confused.

18 Q Okay. To refresh your memory -- and the  
19 document that might do that, Exhibits 4 and 5, might  
20 help you in the orientation to this situation.

21 A I guess I was more confused by the question  
22 itself.

23 Q Sure.

24 In the spring, after its request, the  
25 County of Erie went ahead and hired some caseworkers;

1 is that right?

2 A Yes, that is correct.

3 Q And their choices, from the list, were made  
4 as if Mr. Dows was not on the list?

5 A Correct.

6 Q Is that fair?

7 A Correct.

8 Q But of course, he was.

9 A Correct.

10 Q Which later the Commission would deal with,  
11 in its order.

12 A Yes.

13 Q But, while the Commission was -- do you  
14 have an opinion as to whether the County of Erie was  
15 in its rights to hire, without hiring Mr. Dows, simply  
16 because they had made the request?

17 A In my opinion, they were within their  
18 rights, yes.

19 Q And if the Commission eventually decided  
20 that Mr. Dows should have been removed from the list,  
21 there would have been no harm and no foul?

22 A That is correct.

23 Q But if the Commission had decided that it  
24 was wrong, which it eventually did, while incorrect  
25 removed Mr. Dows from the list, then that would mean,

1 in practical terms, someone had the position that  
2 should have been offered to Mr. Dows?

3 A That is correct.

4 Q And the Commission then worked to rectify  
5 that as best it could, with its order?

6 A We -- we ordered the Erie County Children  
7 and Youth agency to appoint Mr. Dows, in order --  
8 because of the other two appointments they had.

9 Q Right.

10 And it would be their decision, if they  
11 then wanted to, if you will, bump the last person in  
12 the chain, or accept the fact that they had one more  
13 hire than they had originally planned to have; is that  
14 right?

15 A I am not sure I understand that.

16 Q Assuming, for the sake of discussion, that  
17 the County of Erie had, while ignoring, for whatever  
18 reason, Mr. Dows, had hired the number of people that  
19 it had wanted to have, and then was ordered to hire  
20 Mr. Dows, it was the county's prerogative to decide  
21 whether it wanted to simply have one more person, or  
22 hire Mr. Dows and drop whoever would have been the  
23 lowest ranking person on the civil service list, out  
24 of the people they did hire; would that be right?

25 A We only required them to hire Mr. Dows.

1 Q And then however it plays out, after that,  
2 is not your concern, unless it seems to offend an  
3 individual, and brings to your attention a possible  
4 violation of the civil service laws and regulations?

5 A I suppose that would be possible, yes.

6 Q So really, unless it seemed to cause a  
7 problem to someone else, who chose to complain of it,  
8 that would not be of formal interest to the Commission  
9 how the situation played out of Mr. Dows was hired?

10 A Our only concern was that Mr. Dows be  
11 hired.

12 Q Now, in the description of the entry level  
13 requirements to be a social worker intern versus  
14 coming in as a caseworker, the amount of experience  
15 is -- required, is different for the two lists.

16 A Okay.

17 Q Do you have any knowledge of the decision  
18 making, or any discussions about how to set the amount  
19 of experience that would be necessary to be considered  
20 on the trainee list?

21 A I don't have any knowledge of that.

22 Q Now, in the unassembled test, which is a  
23 useful term we have used in referring to, among other  
24 tests, the county social intern caseworker, there are  
25 various areas that a scorer, a reviewer must give a

1 weight to. I apologize for ending with a preposition.

2 Is it your testimony, which is

3 double checking from before, that you are not sure,

4 not aware of how those tests are graded?

5 A That is correct, I am not aware of how they  
6 are graded.

7 Q Have you worked with any other unassembled  
8 test situations, and are you -- and are you aware of  
9 how those tests' subjective areas are graded, or  
10 weighed?

11 A I am aware that that exists, yes.

12 Q Do you pick up any broad rules, general  
13 application, about how reviewers or graders are  
14 supposed to look at the unassembled test data, to  
15 weight it, and evaluate it?

16 A I have no knowledge at all of that.

17 Q When the County of Erie was hiring shortly  
18 after it had asked to have Mr. Dows removed from the  
19 list, did it make any contact, of which you are aware,  
20 with anyone in the Commission, asking if it was  
21 acceptable for it to proceed with hiring before the  
22 resolution of the Dows matter?

23 A I don't recall any conversation like that.

24 Q And none of your co-workers, or

25 Commissioners, ever commented that they have been

1 contacted in that regard; is that right?

2 A Not that I recall.

3 Q Can applicants, for the county caseworker  
4 positions, change the counties in which they are  
5 interested, during the life of a list; can they change  
6 their mind?

7 A Yes, they can.

8 Q So as long as they stay within whatever  
9 that maximum number of counties is, which we don't  
10 know right now, but whatever it is, they can change  
11 which counties they are shooting for employment in?

12 A That's correct.

13 Q Is there a requirement that an individual,  
14 who is an intern, reside in the county where he or she  
15 is asking to serve?

16 A Are you asking if there is a civil service  
17 requirement?

18 Q Right, civil service requirement, that the  
19 interns actually live in the county where they are --

20 A No, there is not a civil service  
21 requirement.

22 Q Okay.

23 And so a person could even be from outside  
24 of the Commonwealth, and be applying to work?

25 A I don't know if there is a Pennsylvania

1 residency requirement for that class.

2 Q Oh, okay.

3 A Or not. Some classes have a Pennsylvania  
4 residency requirement.

5 MR. TAGGERT: If you will excuse us for  
6 what I think will be a one minute break.

7 (Recess taken.)

8 MR. TAGGERT: We can go back on the record.

9 BY MR. TAGGERT:

10 Q Sir, except for any follow up, that might  
11 be needed for anything attorney Lloyd chooses to ask,  
12 we have no further questions.

13 Thank you, very much.

14 THE WITNESS: Thank you.

15 MS. LLOYD: And I don't have any follow  
16 ups, so --

17 MR. TAGGERT: So, sir, you are a free man.

18 MS. LLOYD: You have the option to read and  
19 sign this deposition transcript, looking for any  
20 errors, or anything. Would you like to do that?

21 THE WITNESS: Should I do that?

22 MR. TAGGERT: I need to point out one  
23 thing, that you may not know, this man is the  
24 greatest court reporter east of the Mississippi.

25 MS. LLOYD: I usually suggest that you do,

1 just in case.

2 THE WITNESS: Yes. Okay.

3 MS. LLOYD: So, yes.

4 THE WITNESS: I will do that.

5 - - -

6 (Thereupon, at 12:25 o'clock p.m., the  
7 deposition was concluded.)

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